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IN THE

Supreme Court of the United States

October Term, 1943

No. 268

GEORGE C. BENNETT,
Petitioner,

v.

JULIUS DE GEETER,
Respondent.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondent presents two contentions—

(1) That no federal question is presented by the record (Point One).

(2) That no federal question was raised in the State Court (Point Two).

These contentions are not sound.

As to Respondent's Point I

In support of his contention that no federal question is presented by the record respondent first points out that the authority for the writ sought is contained in Title 28, Sec. 344-B of the U. S. Code.

Respondent then cites Rule 38, par. 5 (a) of this Court as a limitation on that authority.

The rule attempts no such limitation: it expressly states that the reasons specified in par. 5 (a) are "neither controlling nor fully measuring the Court's discretion."

Respondent then asserts that "there was no dispute below that the Court of Chancery had jurisdiction over the general subject-matter" and cites fourteen New Jersey cases.

Respondent's assertion is not in accordance with the fact, nor do the cases cited by him sustain that assertion.

Respondent fails to define what he means by "general subject-matter", but his argument shows that he intends to have it understood by this Court that it means the legal rights of the petitioner and all of the issues raised in petitioner's original action at law. With respondent's assertion, having this meaning, there has always been a dispute by the petitioner. Petitioner instituted his original action upon his claim in the law courts of New Jersey. Thereafter, when he was brought into Chancery by the respondent, petitioner consistently maintained that Chancery was without jurisdiction over his claim at law, and, in his counterclaim in Chancery, did not ask for a complete determination of his rights but only asked that Chancery determine whether a partnership existed and if it determined that a partnership did exist then that it give him the appropriate relief.

It was expressly asserted by petitioner that if Chancery found that no partnership existed it should then dismiss the suit and remit him to his proper action at law (Record, p. 105). He did not concede that Chancery had the right to adjudicate upon issues of law, nor did he, by his affirmative action or by any failure to act, confer upon Chancery jurisdiction to determine such issues. No legal issues were raised by petitioner's counterclaim in the Chancery suit.

As a matter of fact, respondent's counsel in the argument before the Court of Chancery said:

"Now this case boils itself down to whether or not the parties were partners. If they were partners, my client has to account. If his client was merely an employee, then the counterclaim should be dismissed" (Record, p. 201).

Of the fourteen cases cited by respondent (Respondent's Brief, p. 4) not one supports the jurisdiction of the Court of Chancery to adjudicate the legal rights of a party where no equity has been found to exist.

Ten of the cases (*Bowne* v. *Windsor*, 106 N. J. Eq. 415; *Wiley* v. *Wirbelauer*, 116 N. J. Eq. 391; *Cooperstein* v. *Shapiro*, 118 N. J. Eq. 337; *Stein* v. *Spearin*, 120 N. J. Eq. 169; *Cooperstein* v. *Shapiro*, 122 N. J. Eq. 238; *Braddock* v. *Hinchman*, 78 N. J. Eq. 270; *Eugster* v. *Eugster*, 89 N. J. Eq. 531; *Jackson* v. *Hooper*, 76 N. J. Eq. 185; *Davis* v. *Minch*, 80 N. J. Law 214; *Savage* v. *Dowrie*, 11 N. J. Eq. 108) merely hold that the Court of Chancery has jurisdiction of an action where a partnership or joint venture exists, and they find that it does exist.

Two cases, namely, *Gulick* v. *Gulick*, 14 N. J. Law 578, and *Schedacher* v. *James*, 107 N. J. Law 400, were actions in the law courts on accounts stated after the partnership ended. In both cases motions to dismiss for want of jurisdiction in the law court were denied.

The other two cases support the proposition contended for by petitioner, that equity does not have jurisdiction to try the issues where it is found that a partnership or joint venture does not exist.

Vermeule v. *Vermeule*, 82 N. J. Eq. 531, was an action in Chancery to enjoin the prosecution of an action in the law courts which the Chancery defendant had brought on certain promissory notes. The plaintiff in the Chancery Court claimed that the notes formed part of a partnership transaction. The Court of Chancery held that the partnership had ceased before the notes were given, and dismissed the bill and dissolved the temporary injunction.

Kurth v. *Maier*, 133 N. J. Eq. 388, was also an action in Chancery alleging a joint venture between the parties in the purchase of certain shares of stock of the plaintiff with money advanced by the defendant. The defendant had failed to deliver the stock to the plaintiff when the latter repaid the money advanced. This is a very recent case, and the opinion, unanimously concurred in, was written by the Chief Justice of New Jersey. This case clearly defines the rule, and the application thereof, which petitioner contends applies to the case at bar. In his opinion, the Chief Justice says at page 390:

> "In our view, the facts exhibited in the bill of complaint do not make out a joint adventure. The decisions relied upon by the Vice Chancellor, wherein joint adventure was made out and Chancery had jurisdiction, to wit: Bowne v. Windsor, 106 N. J. Eq. 415; affirmed 108 N. J. Eq. 270; Cooperstein *v.* Shapiro, 118 N. J. Eq. 337; Jackson *v.* Hooper, 76 N. J. Eq. 85; reversed, 76 N. J. Eq. 592, are based on elements *fiduciary and equitable in nature*, not found in the bill filed in this cause. A joint adventure is an undertaking usually in a single instance to engage in a transaction of profit where the parties agree to share profits and losses. Equity may entertain jurisdiction *in such circumstances* upon principles that are applicable to partnerships, Braddock *v.* Hinehman, 78 N. J. Eq. 270. * * *.
>
> * * * The relationship of the parties was *pledgor and pledgee*—nothing more. If, as it is alleged, the covenants of the parties regarding the bailment of the stock certificates were breached by the defendant, the complainant has a complete and adequate remedy at law. The bill should have been dismissed" (p. 391).

Thus, following the reasoning in the very cases relied upon by respondent, it is clear that since the Court of

Chancery in the case at bar found that no partnership nor joint venture was made out, Chancery had no jurisdiction to determine the legal issues and to enjoin the trial of the same.

Respondent asserts (Respondent's brief, p. 4):

> "The only dispute now sought to be brought to this Court is this: It is claimed that the Chancellor exceeded his jurisdiction when he restrained the action at law. Bennett's contention now is, that despite the fact that all of the issues were adjudicated upon, that he still has the right to sue in a law court on a *quantum meruit* theory."

This does not accurately state the case nor is it the fact. Petitioner's claim is that the restraint of his action at law deprives him of his right to due process of law and therefore it is violative of the Federal Constitution. The issues asserted in the action at law were not raised by the pleadings in Chancery. Hence any adjudication of issues beyond the scope of the Chancery suit is a nullity. Furthermore, the Court of Chancery's jurisdiction was limited to a determination of the existence of an equitable relationship. That Court's right to decide strictly legal issues ceased when it found no equities between the parties and denied petitioner equitable relief.

Respondent asserts that the rule is that the determination by the highest court of a State as to the interpretation of the constitution of that State and the jurisdiction of its Courts is binding upon this Court.

The Court of Errors and Appeals in its decision did not construe the constitution of the State of New Jersey. If it had, the interpretation by the State court of the State constitution and its decision as to the jurisdiction of the State courts is subject to review by this Court if the result of such decision is to violate a provision of the federal constitution. See *Buchalter* v. *New York*, L. Ed. Advance

Reports, Vol. 87, No. 17, pp. 1088, 1089, and *Hebert* v. *Louisiana*, 272 U. S. 312, 316 (both cases cited by respondent).

In *Buchalter* v. *New York*, this Court says (p. 1089):

> "The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as 'the law of the land.' Where this requirement has been disregarded in a criminal trial in a state court this court has not hesitated to exercise its jurisdiction to enforce the constitutional guarantee."

In *Hebert* v. *Louisiana*, this Court says (p. 316):

> "What it does require is that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as 'law of the land.' "

Brown v. *New Jersey*, cited by respondent, is to be found in 175 U. S. 172 (not 173 U. S.) but we have been unable to find in the reported opinion the language quoted in respondent's brief. The case merely holds that the decision of a State Court that a State statute does not violate the State Constitution is binding on the Federal Courts.

The petitioner is not asking this Court to review a question under the constitution of New Jersey, but a question under the constitution of the United States.

The third step in respondent's argument is, that it is the rule that a Court of Chancery having obtained jurisdic-

tion of a cause has the right to retain that cause for the purpose of affording complete relief.

Respondent quotes in support of this a general statement to be found at the beginning of Sec. 231 of Pomeroy's Equity Jurisprudence, Fifth Edition, Vol. 1, page 410. As originally stated, it is not the rule. It should be noted that the learned editor of the Fifth Edition has appended a footnote to this statement in which he questions its accuracy. He also adds to the text at the end of Sec. 233, page 419, where he states:

> "The court (Chancery) will deal with legal questions only so far as their decision is incidental or essential to the determination of some equitable question. It will not retain jurisdiction to grant a purely legal remedy, or to try a claim for unliquidated damages."

Shaw v. *Beaumont Co.*, 88 N. J. Eq. 333, cited by respondent as authority for this New Jersey rule, actually holds to the contrary of respondent's contention, and is cited by the editor of the Fifth Edition of Pomeroy in support of his statement of the actual rule. The opinion does indeed contain dicta to the effect that where special equities are found to exist the Court of Chancery can retain jurisdiction and determine incidental legal issues also, but the Court expressly points out that where no equitable jurisdiction is found to exist Chancery cannot proceed to try the legal issues. The Court says (p. 335):

> "The clause in the agreement of February 26, 1913 providing for the conveyance of the property and the holding of it by the defendant until it should be paid, is the distinguishing feature between that agreement and the two preceding agreements referred to above. That clause is the sole ground, or the special equity, which gives the court of chancery jurisdiction over this cause":

and (p. 336):

> "In this case the defendant has an adequate and complete remedy at law, for all the items involved under the two former contracts, including damages for their alleged breach. *The Court of Chancery cannot retain jurisdiction for the purpose of granting a purely legal remedy or to try a claim for unliquidated damages. Trotter* v. *Heckscher,* 40 N. J. Eq. 657; *Phillips* v. *Pullen,* 45 N. J. Eq. 157." (Italics ours.)

In the case at bar the Court of Chancery by its decision that no partnership or joint venture existed between the parties has directly decided that no special equities exist. Having so decided, it was without jurisdiction to consider legal issues and assume to determine such issues.

The federal question is raised by the fact that the courts of New Jersey have denied to petitioner the right to have a trial of the legal issues. The value of petitioner's services as an employee or his legal rights under his contract of employment were not, and could not be, at issue before the Court of Chancery. The petitioner could not be expected to present to the Chancery Court evidence upon the purely legal issues, at his peril, when those issues were not before that Court and not within its jurisdiction.

On this point, this Court appears to have made a controlling decision, *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill,* 281 U. S. 673, Mr. Justice BRANDEIS there says (pp. 681-682):

> "Our present concern is solely with the question whether the plaintiff has been accorded due process in the primary sense,—whether it has had an opportunity to present its case and be heard in its support, undoubtedly, the state court had the power to construe the statute dealing with the state tax commission; and to re-examine and overrule the Laclede

> Sand & Improv. Co. case. Neither of these matters raises a federal question; neither is subject to our review. But, while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary, or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

Respondent appears to have completely misconceived petitioner's contention.

Briefly restated, petitioner claims the protection of the Fourteenth Amendment of the Federal constitution. The State of New Jersey, acting through its judiciary, has deprived the petitioner of due process of law and of the equal protection of the law. The State of New Jersey has destroyed petitioner's fundamental right to enforce his legal demand for damages and for the reasonable value of his services by denying to petitioner his remedy, *e. g.*, the right to proceed in the law courts with the trial of his legal issues.

That part of the Chancellor's decree which purports to determine petitioner's legal rights is null and void, first, because it is beyond the scope of the pleadings, and secondly, because the Chancery Court exceeded its jurisdiction as limited by "the law of its creation." To have gone beyond the scope of the issues raised before it and to have exceeded its jurisdiction was not due process. To prevent, by injunction, a trial in the Court where those issues have been raised and which, under the "law of its creation" has exclusive jurisdiction thereof, is a denial of due process and of the equal protection of the laws.

As to Respondent's Point II

The Federal question was raised in the State Court and was not abandoned.

Respondent (Respondent's brief, p. 8) admits that the Federal constitutional question was raised by petitioner in the petition of appeal to the Court of Errors and Appeals (Record, p. 7, par. O), but asserts that "it was not even mentioned" in petitioner's brief in that Court. The last paragraph on page 77 of petitioner's (appellant's) brief in the Court of Errors and Appeals reads:

> "The decree and the injunction therein granted is violative of and repugnant to the Fourteenth Amendment to the Constitution of the United States in that it deprives the defendant-appellant of his property without due process of law and denies the said defendant-appellant the equal protection of the law."

The above paragraph is the conclusion of Point Five of petitioner's (appellant's) brief, which dealt with the effect of the injunction as a denial of petitioner's fundamental rights. We submit that this is far from being an abandonment of the Federal question.

The Federal constitutional question was again raised on page 6 of petitioner's petition for reargument in the Court of Errors and Appeals. The practice in that Court does not require that such petition be served upon opposing counsel.

Petitioner was not bound to assume that the Vice-Chancellor would violate the provisions of the Federal constitution, that he would enjoin the trial of the action at law when he found that no equitable jurisdiction existed, or that the Court of Errors and Appeals would sustain the Vice-Chancellor in such violation.

Petitioner raised the Federal constitutional question in his petition of appeal to the Court of Errors and Appeals and in his brief before that Court. The fact that the Court of Errors does not discuss the constitutional question in its opinion is entirely irrelevant. By failing to do so it could not prevent petitioner from raising that question or from seeking to bring the same before this Court (*Chicago, Burlington & Quincy R. R. Co.* v. *Chicago,* 166 U. S. 226, at page 231).

When petitioner became for the first time aware that the Court of Errors and Appeals had violated the Federal constitution by its affirmance of the injunction, as petitioner did only after the decision of that Court, he then immediately again raised the Federal constitutional question by his application for reargument before that Court.

Petitioner could not do more, and what he did was ample, and it was done in time.

Brinkerhoff-Faris Trust & Sav. Co. v. *Hill,* 281 U. S. 673, 677-678;

Chicago, Burlington & Quincy R. R. Co. v. *Chicago,* 166 U. S. 226.

CONCLUSION

The Writ Should Be Granted

Respectfully submitted,

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